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OFFICE OF PETITIONS

In re Application of :
Gord Nelson :
Application No. 10/016,105 : **ON PETITION**
Filed: October 30, 2001 :
Attorney Docket No. Nelson.G-01 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed May 12, 2004.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Non-Compliant Amendment, mailed September 30, 2003. This Office action set one (1) month period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above identified application became abandoned on October 31, 2003. A Notice of Abandonment was mailed on May 7, 2004.

Petitioner states that he did not receive the September 30, 2003 Notice of Non-Compliant Amendment until December 14, 2003.

MPEP 710.06 states that:

The Office will grant a petition to restart the previously set period for reply to an Office action to run from the postmark date shown on the Office mailing envelope which contained the Office action when the following criteria are met:

(A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;

(B) the reply period was for payment of the issue fee, or the reply period set was 1 month or 30 days; and

(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), (2) a copy of the envelope which contained the Office action showing the postmark date, and (3) a statement setting forth the date of receipt of the Office action at the correspondence address and stating that the Office action was received in the postmarked envelope.

Here, petitioner has not met requirements (A) and (C) above. Petitioner did not file the instant petition within 2 weeks of the date of receipt of the Notice of Non-Compliant Amendment. Furthermore, petitioner did not include any evidence showing the date of receipt of the Notice.

While the showing of record is not sufficient to withdraw the holding of abandonment, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m); and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

Telephone inquiries related to this decision should be directed
to the undersigned at (571)272-3207.

A handwritten signature in black ink, appearing to read "Cliff Congo", with a stylized flourish at the end.

Cliff Congo
Petitions Attorney
Office of Petitions